

HOUSE BILL NO. 117

INTRODUCED BY T. MCGILLVRAY

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING THE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES DISCRETION TO SEEK WAIVERS OF FEDERAL LAW CONCERNING INELIGIBILITY FOR MEDICAID LONG-TERM CARE FOR ASSET TRANSFER LOOKBACK AND PENALTY PERIODS; AMENDING SECTIONS 53-6-166 AND 53-6-189, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-6-166, MCA, is amended to read:

"53-6-166. Period of ineligibility for medical assistance when assets disposed of for less than fair market value -- undue hardship exception -- department to adopt rules. (1) The department shall, in accordance with 42 U.S.C. 1396p, ~~as may be amended, and~~ implementing federal regulations and policies, and any waiver of federal law granted by the secretary of the United States department of health and human services pursuant to 42 U.S.C. 1315(a), impose upon an applicant or recipient a period of ineligibility for medical assistance under this part when the applicant or recipient or the spouse of either directly or indirectly disposes of any assets for less than fair market value during the applicable ~~3-year, 5-year, or other time~~ period provided by 42 U.S.C. 1396p, ~~as may be amended, or by other federal law, or by any waiver of federal law granted under~~ 42 U.S.C. 1315(a).

(2) A period of ineligibility for medical assistance may not be imposed upon an applicant or recipient under this section to the extent that the department determines, in accordance with procedures specified by department rule, that the denial of eligibility would cause an undue hardship as defined by department rule.

(3) The department shall adopt rules that implement this section, that are consistent with 42 U.S.C. 1396p, ~~as may be amended, and that implement federal regulations and policies to implement this section and~~ any waiver of federal law granted pursuant to [section 3] and 42 U.S.C. 1315(a). The rules adopted under this section must include but are not limited to rules addressing the following:

(a) a description of the circumstances considered to constitute an undue hardship;

(b) the procedures by which an individual may seek an undue hardship exception;

(c) the persons entitled to an undue hardship exception; and

(d) notice and opportunity for a hearing regarding imposition of a period of ineligibility or denial of an undue hardship exception.

(4) Nothing in 53-6-143, 53-6-144, 53-6-165, 53-6-167 through 53-6-169, 53-6-171 through 53-6-189, or this section is intended to prohibit the department from adopting rules consistent with federal law that provide for a period of ineligibility for public assistance programs other than medical assistance when an applicant or recipient directly or indirectly disposes of assets for less than fair market value."

Section 2. Section 53-6-189, MCA, is amended to read:

"53-6-189. Rulemaking authority. The department may adopt rules to implement 53-6-143, 53-6-144, 53-6-165 through 53-6-169, and 53-6-171 through 53-6-188. The rules must comply with applicable federal law in 42 U.S.C. 1396, et seq., ~~as may be amended, and~~ applicable implementing regulations and policies, and any waiver of federal law granted pursuant to [section 3] and 42 U.S.C. 1315(a)."

NEW SECTION. Section 3. Authority to seek waivers. The director of the department of public health and human services may seek a waiver of federal law pursuant to 42 U.S.C. 1315(a) for the purpose of establishing that the period of ineligibility for long-term care under the medicaid program for medicaid-funded services because of a transfer of assets for less than fair market value:

(1) begins on the later of the first day of the month of the transfer of assets for less than fair market value or the first day of the month when the applicant is found otherwise eligible for medicaid coverage of services; and

(2) applies when a transfer occurs on or after the first day of the 60th month before the application for medicaid services is made.

NEW SECTION. Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [section 3].

NEW SECTION. Section 5. Applicability -- notification. (1) [This act] applies to the transfer of assets of less than fair market value that occur on or after [the effective date of the waiver referred to in [section 3]].

1 (2) The department of public health and human services shall notify the code commissioner in writing
2 of the receipt of the waiver referred to in [section 3] and of the effective date of the waiver.

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